

No.

Supreme Court, U.S.
F I L E D

05-606 NOV 14 2005

In The
Supreme Court of the United States

OFFICE OF THE CLERK

KEITH KEGLEY and KIMBER KEGLEY,
CECIL HAMMONDS and MAGGIE HAMMONDS,
and CHADWICK J. MCKEOWN,

Petitioners,

v.

CITY OF FAYETTEVILLE, a
North Carolina Municipality,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX

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TO THE HONORABLE SUPREME COURT OF THE
UNITED STATES:

All Petitioners in the above-captioned action respectfully petition this Honorable Court pursuant to 28 U.S.C. § 2101(c) and Rule 13 of the Rules of the Supreme Court of the United States for a Writ of Certiorari to review the North Carolina Supreme Court's decision denying Petitioners' Petition for Discretionary Review and the decision of the North Carolina Court of Appeals which Petitioners sought to have reviewed (collectively referred to as the "State Court decisions"), and show the Court as follows:

QUESTION PRESENTED

Whether the automatic tolling provision of Servicemembers' Civil Relief Act Section 206(a) (50 App. U.S.C. § 526(a)) applies to the 60-day limitation period established by N.C. Gen. Stat. § 160A-50(a) for challenges to involuntary annexation ordinances adopted by local governments?

PARTIES

The Petitioners are five individuals — Keith Kegley and his wife, Kimber Kegley, Cecil Hammonds and his wife, Maggie Hammonds, and Chadwick J. McKeown. Petitioners Keith Kegley, Cecil Hammonds, Maggie Hammonds and Chadwick J. McKeown were at all times relevant to this Petition active duty members of the United States Army stationed at Fort Bragg, North Carolina, and owners of residential property in the Annexation Area.

The Respondent, the City of Fayetteville, is a North Carolina municipality having such power and authority as is granted to it by the General Assembly of the State of North Carolina, including the power to involuntarily annex territory pursuant to Part 3, Article 4A of North Carolina General Statutes, Chapter 160A.

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Kegley et al. v. City of Fayetteville, ___ N.C. ___, 600 S.E.2d 859 (July 12, 2004); North Carolina Supreme Court No. 342P04; Order Granting Petitioners' Motion For Temporary Stay;

Kegley et al. v. City of Fayetteville, 358 N.C. 729, 600 S.E.2d 861 (July 13, 2004); Order Allowing Petitioners' Petition for Writ of Supersedeas, Denying Petitioners' Petition for Writ of Certiorari to Review Court of Appeals' Order Dissolving Temporary Stay of Annexation Ordinance, Denying Petitioners' Application for Discretionary Review prior to Determination by Court of Appeals and Allowing Petitioners' Application to Stay Superior Court's Order in Part, and Denying Respondents' Urgent Motion to Dismiss Temporary Stay Or, Alternatively, to Expedite Review;

Kegley et al. v. City of Fayetteville, North Carolina
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Keith Kegley et al v. City of Fayetteville, North Carolina, United States Supreme Court Application No. 05A281 (September 28, 2005) Order Denying Petitioners' Application for Stay Pending Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

The Order of the North Carolina Supreme Court denying Petitioners' Petition for Discretionary Review of the North Carolina Court of Appeals' decision was entered on August 19, 2005. (App. p. 17a).¹ According to N.C. Gen. Stat. § 160A-50(i), the denial of a petition for discretionary review constitutes the "final judgment" in an annexation challenge.

Pursuant to 28 U.S.C. § 1257(a), final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court by Writ of Certiorari, where, *inter alia*, a statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the laws of the United States. Here, North Carolina State Courts refused to apply the automatic tolling provision of Section 206(a) of the Servicemembers' Civil Relief Act to the 60-day limitation period established by N.C. Gen. Stat. § 160A-50(a).

¹ Such references are to the Appendix to this Petition required by Rule 13(1)(i) of the Rules of the Supreme Court of the United States.